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In the
Supreme Court of the United States

OCTOBER TERM, 1970

No. 70-152

MINNEAPOLIS FEDERATION OF TEACHERS, LOCAL NO. 59
Petitioner

VS.

DOUGLAS M. HEAD, ATTORNEY GENERAL, STATE OF MINNESOTA; KEITH W. DAVIDSON, KATHERINE V. HOWARD, HARVEY A. RING AND BETTY K. ROBB, ON BEHALF OF THEMSELVES AND ALL OTHER TAXPAYERS AND RESIDENTS OF SPECIAL SCHOOL DISTRICT NO. 1 OF THE CITY OF MINNEAPOLIS; SPECIAL SCHOOL DISTRICT NO. 1 AND ITS BOARD OF EDUCATION; CITY OF MINNEAPOLIS EDUCATION ASSOCIATION; AND JOHN DOE
Respondents

BRIEF OF RESPONDENT KEITH W. DAVIDSON, ET AL.

OPINION BELOW

The opinion of the Supreme Court of the State of Minnesota (App. pp. 72-91 of Petition) is reported at 182 N. W.2d 887. It has not been reported in the official Minnesota Reports as yet.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition. The jurisdiction of this Court is invoked under *28 U.S.C.A.* Sec. 1257 (3).

QUESTIONS PRESENTED

1. Whether a state which places full authority in a school board to determine the salaries of its tenured and nontenured teacher employees without affording aggrieved teachers opportunity for an evidentiary hearing, or other adequate remedy, to determine the reasonableness of those salaries, denies teachers substantive and procedural due process in violation of the Due Process clause of the Fourteenth Amendment.

2. Whether a state statute which allows a school board to terminate the employment and compensation of tenured and nontenured public school teachers without affording them opportunity for review or for hearing prior to termination denies those teachers procedural due process in violation of the Due Process clause of the Fourteenth Amendment.

3. Whether state statutes which impose no penalties on one group of striking public employees but imposes automatic and harsh penalties on a second group, and which provides the first group with more effective impasse procedures than are provided for the second group, constitutes a denial of equal protection in violation of the Equal Protection clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent provisions of the *Minnesota Statutes* involved (Sec. 125.12, 125.17, 125.19 to 125.26, 179.35 to 179.39, and 179.50 to 179.58) which are relevant to the decision in this case are set forth in the Appendix pp. 23-45 of Petition. *U.S. Const.*, Amendment XIV, Sec. 1.

STATEMENT

The Attorney General intiated this action in the District Court, Hennepin County, Minnesota, under the Declaratory Judgment Act (*M.S.A.* ch. 555) against the Minneapolis School Board (School Board), the Minneapolis Federation of Teachers, Local No. 59 (MFT) and the City of Minneapolis Education Association (CMEA) to test the validity of a settlement made between the School Board, the MFT and the CMEA to end a strike by some of the teachers in the Minneapolis school system in April, 1970. A group of taxpayers headed by Keith W. Davidson, et al. (Intervenors) intervened in the action as parties plaintiff.

The settlement between the School Board, MFT and CMEA is incorporated in three resolutions identified as A, B, and C. Resolution A is summarized in the Supreme Court's opinion (App. pp. 79-80 of Petition) in the following language:

> "the board rehired the striking teachers under the provisions of Sec. 179.55 and intends to pay to each of them as part of his or her last paycheck for the school year 1970-1971 an amount equivalent to the difference in pay between what that teacher was paid during the 1970-1971 school year and what he would have been paid during the school year if he had been

> employed at the appropriate step and lane of the 1970-1971 salary schedule."

Resolution B is summarized in the Supreme Court's opinion (App. p. 80 of Petition) in the following language:

> "the board paid each of the striking teachers for 7 days during the strike period (April 20-24, 27 and 28) an amount equal to their regular compensation."

Resolution C was severed for trial at a later date (App. p. 54 of Petition) and was not passed upon by the Court.

The matter was tried to the Court on a stipulation of facts. The Court found Resolutions A and B to be null and void (App. p. 57 of Petition) and ordered judgment accordingly. The Judgment was affirmed on appeal (App. p. 91 of Petition).

ARGUMENT

I.

THE DECISION BY THE STATE COURT IS CORRECT

The State Court held Resolution A would result in an increase in compensation during the year after rehiring above that received prior to the strike, contrary to the provisions of Sec. 179.55 and cannot be sustained (App. pp. 90-91). Public employees have no common-law right to strike. *Anderson Federation of Teachers, Local 519 v. School City of Anderson,* 251 N.E.2d 15, cert. denied (1970), 38 U.S. L.W. 3522, Case No. 1571 (1970). A codification of the common-law prohibiting public employees to strike (*M.S.A.* 179.51) does not change the law.

Minnesota Const. Art. VIII, Sec. 1 imposes upon the

legislature the "duty . . . to establish a general and uniform system of public schools." It is an elementary principle of law that a duty so imposed cannot be legislated away. The Legislature can and has delegated some of its authority to school districts, but it can never relinquish its position of responsibility and superiority over the school district. Any authority granted by the Legislature may be retrieved or restricted by subsequent legislation. In this instance, the Legislature through the enactment of *M.S.A.* 179.55 has restricted the School Board in the amount it can pay to a striker, if the School Board rehires him. The School Board is bound by the restriction imposed upon it by the Legislature.

Counsel for Petitioners argue that this restriction placed upon the School Board is unconstitutional because there is no provision for review as to reasonableness. The School Board gave the strikers the maximum permitted by law and endeavored through Resolution A to give more. The granting of the excess is what gave rise to this litigation. The Legislature has the inherent power to fix salaries of all public employees, and its decision is not subject to arbitration, negotiation or any other form of determination unless it sees fit to make it so. The Court has never seen fit to impose upon the Legislature the duty to arbitrate, negotiate or otherwise relinquish its absolute power in legislative matters.

Counsel for Petitioners argue that "important statutory rights are subject to procedural due process review before such rights may be terminated" (p. 13 of Petition). The decision by the Minnesota Court was not based upon due process. The Court merely determined that Resolution A violated *M.S.A.* 179.55 (App. p. 91 of Petition). Likewise,

the Court determined that Resolution B was null and void because the recipients were not employees (*M.S.A.* 179.-54) and presumably the payment for seven days when no services were performed would constitute a gratuity of public funds (App. p. 90 of Petition).

In the case of *Freeman v. Special School Dist. of Lincoln Co. Ark.*, 405 F.2d 1153 (1969), the Court made the following observation:

> "The plaintiffs view the Board's position in sustaining Dalton's recommendation for not renewing their contracts and placing upon them the burden of securing Dalton's approval as arbitrary and capricious and a denial of federal due process under the Fourteenth Amendment. Stripped of the racial issue this case presents no federal question."
>
> 405 F.2d 1157.

Stripped of the contentions that Petitioner's rights under the Due Process and Equal Protection clauses of the Fourteenth Amendment have been denied, there is no federal question presented. That the Petitioner has not been denied such rights will be argued in the next two sections of this brief.

II.

THERE IS NO DENIAL OF CONSTITUTIONAL DUE PROCESS PROCEDURE

The issue of a hearing and the manner of conducting the same were not presented in the case at bar, nor does it form the basis for the Court's decision. That issue was severed for trial at a later date (App. p. 54 of Petition). The Court in this Declaratory Judgment proceeding

did not endeavor to determine who the strikers were. Such determination is in the first instance for the School Board to make, subject to a hearing, if requested, in accordance with the provisions of *M.S.A.* 179.56.

In the case of *Freeman v. Special School Dist. of Lincoln Co. Ark., supra,* the Court said:

> "When a particular statutory procedure is set up for the dismissal of a teacher it must be followed, but absent statutory procedure the Board may adopt its own method. 47 Am. Jur., Schools, Sec. 125 (1943)."
>
> 405 F.2d 1160.

III.

THE DECISION DOES NOT DENY EQUAL PROTECTION

The question is whether teachers have been placed in a position by the provisions of the no-strike statute and its attendant provisions so that they are denied equal protection of the law in violation of the Fourteenth Amendment. Petitioner compares the provisions of *M.S.A.* 179.51, et seq., which cover teachers with the provisions of *M.S.A.* 179.35, et seq., which cover charitable hospital workers, including those who work in public hospitals. The Charitable Hospital statutes make it unlawful for workers to strike and subjects them to binding arbitration (App. pp. 42-45 of Petition).

Equal protection requires that when the legislature identifies one class of persons for treatment different from that accorded another class, then the distinction between the two must be logical and must be relevant to the achievement of a valid state objective. The United States Supreme

Court has said words to this effect in *McGowan v. Maryland*, 366 U.S. 420 (1961), wherein the Court upheld a conviction under the Maryland Sunday Closing Laws. Rejecting a defendant's argument that the statute violated equal protection by permitting the sale of certain commodities on Sundays while forbidding the sale of others, the Court stated:

> "Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrevelant to the achievement of the State's objective."
>
> 366 U.S. 425.

The Minnesota Supreme Court has enunciated the same standard in numerous cases, a recent example being *Halverson v. Rolvaag*, 274 Minn. 273, 277, 143 N.W.2d 239 (1966), wherein the Court said:

> "Equal protection of the law requires that legislative classifications be founded upon some real and substantial difference bearing a fair relationship to the legislation so that the law operates equally and uniformly on all persons similarly situated."

The Supreme Court of the United States and of Minnesota have both adhered to the principle that the creation of such distinction is largely a matter of sound legislative discretion which must be respected by the courts in the absence of a clear showing of abuse. In the *McGowan* case, *supra*, the Court stated:

> "State legislatures are presumed to have acted within

their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

366 U.S. 425-6.

The Minnesota Court has provided an even more definitive guideline than that provided by *McGowan, supra.* In *Minneapolis Federation of Teachers v. Obermeyer,* 275 Minn. 347, 147 N.W.2d 358 (1966), the issue was whether the Minnesota legislature has violated the equal protection clause by distinguishing between teachers and other public employees in *M.S.A.* 179.572, for the purpose of exempting the former from the negotiations and arbitration provisions of the Public Employees Labor Relations Act. The Court held that the statute did not offend equal protection and stated the following with regard to the legislatively created distinction:

"When the legislature had determined that a sufficient distinction exists between two classes of perons to justify applying rules to one class which do not apply to the other, such determination is binding upon the courts unless it appears that the distinction is purely fanciful and arbitrary and that no substantial or logical basis exists therefor. Classification can never be a judicial question except for the purpose of determining in a given situation, whether the legislative action is clearly unreasonable. In the matter of classification courts have viewed the action of the legislature with great liberality. Courts are not to weigh the merits of a classification in the judicial balance and to reject it merely because they might favor a different standard. These principles are supported in numerous Minnesota authorities. . . ."

147 N.W.2d at 363-4.

In the same *Obermeyer* case, the Court made the following observation relative to the legislature's ability to classify various professional groups:

> "It is well recognized that the legislature may classify professions, occupations, and business according to natural and reasonable lines of distinction, and if such legislation affects alike all persons of the same class, it is not an invalid classification. Legislation with reference to the teaching profession has generally been sustained as a valid classification. 16A C.J.S., Constitutional Law, Sec. 496. The Supreme Court of Illinois has held that a classification of public school teachers as a distinct class for appropriate legislation 'cannot be successfully challenged.' Gorham v. Teachers' Retirement System, 27 Ill.2d 593, 599, 190 N.E.2d 329, 332."

147 N.W.2d 364.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Dated August 25, 1971.

CERTIFICATE OF SERVICE

I hereby certify that on this —— day of August, 1971, three copies of Brief of Respondents Keith W. Davidson, et al. in opposition to the granting of a Writ of Certiorari were mailed, postage prepaid, to:

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counsel for Petitioner and other Respondents in the case. I further certify that all parties required to be served have been served.

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